

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>JOHN PROKOP,</b>	)	<b>CASE NO. 1:22 CV 2153</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>JUDGE DONALD C. NUGENT</b>
	)	
	)	<b>Magistrate Judge Jonathan D. Greenberg</b>
	)	
<b>CROSSCOUNTRY MORTGAGE, LLC,</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>Defendant.</b>	)	

This matter is before the Court on the Motion for Court Ordered Cease and Desist (Docket #5), Motion for Summary Judgment (Docket #6) and, Motion to Remand (Docket #7), filed by Plaintiff, John Prokop, and the Motion to Dismiss Plaintiff's Amended Complaint filed by Defendant, Crosscountry Mortgage, LLC (Docket #25). On December 8, 2022, this case was referred to Magistrate Judge Jonathan D. Greenberg for pretrial supervision. (Docket #8.)

**Factual and Procedural Background**

As summarized by the Magistrate Judge, the Factual Allegations in this case are as follows:

Plaintiff has a mortgage with Defendant. (Id. at 1.) Plaintiff asserts it came to his attention "that there is reason to believe that the alleged lender (defendant) is not the holder in due course [sic] of the borrowers [sic] promissory

note and/or may have breached the agreement concerning the above referenced, [sic] alleged loan or loan of credit.” (Id. at 1, 3.) Since Plaintiff “paid money in the form of a promissory note to the lender to perform according to the loan agreement,” Plaintiff requested Adequate Assurance of Due Performance pursuant to UCC 2-609 and the FDCPA, which Defendant received on September 12, 2022, and October 14, 2022. (Id. at 3.) Defendant “failed and refused to respond pursuant to UCC 2-609 and 15 U.S.C. 1692,” and Plaintiff stopped paying on the mortgage. (Id.) Plaintiff asserts that because Defendant never responded to the Adequate Assurance of Due Performance/Validation within 30 days as required by law, the alleged agreement was ended. (Id.) Defendant “was a company engaged in the business of banking and interstate commerce and entering into contracts with consumers.” (Id.) In addition, Defendant “regularly lends alleged loans and attempts to enforce obligations against debts.” (Id.) Therefore, Defendant must abide by the UCC and the FDCPA. (Id.)

Plaintiff asserts that Defendant is not the holder in due course of the alleged promissory note under UCC 3-302, “and that the loan agreement was stolen and forged, thus ending any claim the defendant has against the Plaintiff.” (Id.) Defendant continued to collect on the debt without providing Adequate Assurance of Due Performance/Validation even after receiving Plaintiff’s notice and demand. (Id.) Defendant continued to send statements and letters demanding payment, made telephone calls demanding payment, and made negative reports on Plaintiff’s credit report, all in violation of the FDCPA. (Id. at 5.) Plaintiff claims to have suffered damages to the extent of the original amount of the alleged debt. (Id.) Plaintiff also asserts that Defendant did not follow generally accepted accounting principles. (Id. at 3.)

(Docket # 28 at pp. 1-3.)

On November 30, 2022, Defendant removed this case to Federal court. (Docket #1.) On December 7, 2022, Defendant filed its Motion to Dismiss the Complaint. (Docket #4.) On December 8, 2022, Plaintiff, proceeding *pro se*, filed his Motion for a Court Ordered Cease and Desist (Docket #5); Motion for Summary Judgment (Docket #6); and, Motion to Remand (Docket #7). On December 19, 2022, Plaintiff filed a Motion to Amend Complaint, which was granted by the Court on January 5, 2023. (Docket #s 9 and 18.)

On January 19, 2023, Defendant filed a Motion to Dismiss Plaintiff’s Amended

Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. (Docket #25.) On January 26, 2023, Plaintiff filed his Opposition Brief. (Docket #26.) On February 9, 2023, Defendant filed its Reply Brief. (Docket #27.)

On February 14, 2023, Magistrate Judge Greenberg issued his Report and Recommendation. (Docket #28.) The Magistrate Judge recommends that this Court grant Defendant's Motion to Dismiss (Docket #25) and deny Plaintiff's pending motions as moot. On February 27, 2023, Plaintiff filed a Brief in Opposition, raising his objections to the Magistrate Judge's Report and Recommendation. (Docket #30.) On March 7, 2023, Defendant filed a Response Brief. (Docket #31.) On March 14, 2023, Plaintiff filed a Reply Brief. (Docket #32.)

#### **Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

#### **Conclusion**

The Court has reviewed the Magistrate Judge's Report and Recommendation *de novo*, analyzing Plaintiff's Objections to the Report and Recommendation and Defendant's Response thereto. Magistrate Judge Greenberg thoroughly and exhaustively researched and analyzed all of the issues presented, in conjunction with the applicable statutory and case law, and correctly

concluded that Plaintiff's Amended Complaint fails to state a viable claim against Defendant.

Accordingly, the Report and Recommendation issued by Magistrate Judge Greenberg (Docket #28) is hereby ADOPTED in its entirety.

The Motion to Dismiss Plaintiff's Amended Complaint (Docket #25) filed by Defendant, Crosscountry Mortgage, LLC is hereby GRANTED.

The Motion for Court Ordered Cease and Desist (Docket #5); Motion for Summary Judgment (Docket #6); and, Motion to Remand (Docket #7) filed by Plaintiff, John Prokop, are hereby DENIED AS MOOT.

This case is hereby TERMINATED.

IT IS SO ORDERED.

  
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DONALD C. NUGENT  
United States District Judge

DATED: March 16, 2023